

ORDINANCE NO. 12-52

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW THE EXPANSION OF A NONCONFORMING USE PURSUANT TO HIALEAH CODE §98-377(b) IN ORDER THAT A GRANDFATHERED GUESTHOUSE BE USED AS A SECOND LIVING QUARTER, AND TO ALLOW NO INTERIOR WEST SIDE SETBACK FOR THE EXISTING GUESTHOUSE, WHERE A MINIMUM OF 5 FEET 1 INCH IS REQUIRED, AND TO ALLOW AN INTERIOR EAST SIDE SETBACK OF 4.20 FEET FOR THE EXISTING MAIN HOUSE, WHERE 5 FEET 1 INCH IS REQUIRED, CONTRA TO HIALEAH CODE §98-348. **PROPERTY LOCATED AT 478 EAST 61 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of August 8, 2012 recommended approval of this ordinance; and

WHEREAS, the applicant proffers a declaration of restrictive covenants providing that the guesthouse will not be occupied year-round, will be used as a temporary residence only by nonpaying and personal guests of the occupant or owner of the principal residence only, the same guest is not permitted to occupy the guesthouse throughout the year and the owner shall not occupy the guesthouse and rent the principal residence at the same time, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow the expansion of a nonconforming use pursuant Hialeah Code §98-377(b) in order that a grandfathered guesthouse be used as a second living quarter, and to allow no interior west side setback for the existing guesthouse, where a minimum setback of 5 feet 1 inch is required, and a an interior east side setback of 4.20 feet, where 5 feet 1 inch is required, contra to Hialeah Code §501, which provides in pertinent part: “[B]uilding permits may be issued for the erection of future structures on existing legally divided

parcels of unimproved land in R-1 zones if such lots are at least an average of 40 feet in width and are an average of at least 125 feet in depth, and provided, further, that such future structures are to maintain a 30-foot front yard setback, and five-foot one-inch side setbacks.”. Property located at 478 East 61 Street, Hialeah, Miami-Dade County, Florida, zoned R-1 (One Family District) and legally described as follows:

LOT 2, BLOCK 1, LOGAN CREST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 19, AT PAGE 18, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 11 day of September, 2012.


THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Isis Garcia-Martinez
Council President

Attest:

Approved on this 13 day of September, 2012.


David Concepcion, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Council Members, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

DECLARATION OF RESTRICTIVE COVENANTS



CFN 2012R0676115
DR Bk 28283 Pgs 2571 - 2573; (3pgs)
RECORDED 09/24/2012 15:17:02
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:

Javier L. Vazquez, Esq.
6500 Cow Pen Road, Suite 302
Miami Lakes, Florida 33014

DECLARATION OF RESTRICTIVE COVENANTS

We, Jose R. Soberon and Gisela Soberon, being the owners of the land described herein:

(see attached Exhibit "A")

The street property address is 478 East 61 Street, Hialeah, Florida
The folio number is 04-2132-014-0020

hereby make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. The guesthouse shall comply with the requirements and definitions in Section 98-1 of the Code, except that the existing kitchen shall be allowed to remain in use and existence.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

DECLARATION OF RESTRICTIVE COVENANTS

Signed, sealed and acknowledged on this 29th day of August, 2012.

Witnesses

[Signature]
Grace Baugh
Clara Martinez
CLARA MARTINEZ

[Signature]
Jose R. Soberon

[Signature]
Grace Baugh
Clara Martinez
CLARA MARTINEZ

[Signature]
Gisela Soberon

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 29th day of August, 2012 by Jose R. Soberon and Gisela Soberon. They personally appeared before me, were personally known to me or produced _____ as identification, and did not take an oath.

(NOTARIAL SEAL)

Notary: Clara Martinez
Print Name: CLARA MARTINEZ
Notary Public, State of Florida
My commission expires: 05/01/16

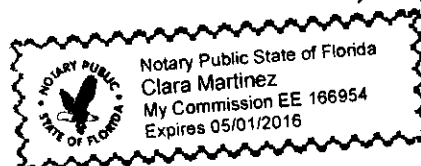


Exhibit "A"

Legal Description

Lot 2, Block 1, LOGAN CREST, according to the Plat thereof as recorded in Plat Book 19, at Page 18, of the Public Records of Miami-Dade County, Florida.